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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

In re A.R., et al., Persons
Coming Under the Juvenile
Court Law.

2d Juv. No. B291404
(Super. Ct. No. 17JD-00312)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

JOSE R., et al.,

Defendants and Appellants.

Angelique R. (mother) appeals the juvenile court's order terminating parental rights to her minor children A.R. and J.R. with a permanent plan of adoption. (Welf. & Inst. Code,¹

¹ All statutory references are to the Welfare and Institutions Code.

§ 366.26.) Mother contends the court erred in finding that the parental benefit exception to adoption (*id.*, subd. (c)(1)(B)(i)) did not apply. We affirm.

FACTS AND PROCEDURAL HISTORY

Mother and Jose R. (father)² are the parents of A.R., born in August 2009, and J.R., born in July 2012. In February 2013, the San Luis Obispo County Department of Social Services (DSS) filed a section 300 petition as to both children based on allegations that their parents were using and selling drugs in their home. Mother successfully reunified with the children and the dependency case was dismissed in September 2013.

In February 2015, DSS filed another section 300 petition alleging that both children had tested positive for methamphetamine and were staying in a hotel room in which they had access to open containers of methamphetamine, marijuana, and cleaning fluids used to “wash checks.” The case was dismissed in February 2017 after both parents successfully reunited with the children.

In October 2017, the parents were arrested again after methamphetamine, marijuana, drug paraphernalia, and guns were found in their home. J.R. once again tested positive for methamphetamine. A third dependency petition was filed and the children were placed with their maternal grandparents. The children were subsequently ordered detained.

² Father is not a party to his appeal. He filed a notice of appeal from the order terminating parental rights, but the appeal was dismissed after his appointed counsel was unable to identify any arguable issues and filed an opening brief in accordance with *In re Phoenix H.* (2009) 47 Cal.4th 835, 838.

Neither parent was present at the combined jurisdiction and disposition hearing. Both were in federal custody and mother was facing a two-to-five-year prison sentence. At the conclusion of the hearing, the court ordered a bypass of reunification services pursuant to section 361.5, subdivision (b)(13), and set the matter for a section 366.26 hearing. We denied mother's petition for extraordinary writ relief from the court's order.

In its report for the section 366.26 hearing, DSS recommended that parental rights be terminated with adoption as the children's permanent plan. DSS reported that both girls were doing well in their placement with the maternal grandparents, who had regularly cared for the children since birth and were fully committed to adopting them. The social worker opined that the children's "need for stability outweighs their relationship with their mother and father. There continues to be an abundance of evidence that the parents have not internalized the ability to demonstrate safety and stability over time. . . . It is in the minors' best interest to establish permanency." The social worker added that "[t]he minors continue to benefit from their close and nurturing relationship with their maternal grandparents," who "are dedicated to the well-being of their grandchildren" and "can provide a safe, stable and nurturing environment where [A.R. and J.R.] have the greatest opportunity to thrive."

Both parents appeared telephonically at the contested section 366.26 hearing. Mother testified that the children enjoyed their visits with her and their twice-weekly phone calls. She disagreed with the recommendation that parental rights be terminated and believed a guardianship with the maternal

grandparents was more appropriate. Father also testified to his belief that terminating parental rights would be detrimental to the children.

The maternal grandmother also testified at the hearing. Although she thought the children would suffer detriment if mother were not a part of their lives, she believed that they needed the stability and permanency that only adoption could provide. When asked if she and her husband understood that parental rights would have to be terminated for the children to be adopted, the maternal grandmother replied, “Yes, we do. And it was not an easy decision . . . , but we felt that the parameters of the guardianship were too broad and unstable and we wanted to provide stability.”

At the conclusion of the hearing, counsel for mother and father asked the court to find the parental benefit exception to adoption precluded the termination of parental rights and order guardianship for the children. The children’s attorney agreed with DSS that the children should be freed for adoption. Counsel argued that “[n]otwithstanding the good relationship that the girls have with their parents, if there was ever a case where children had a profound need for permanency and stability that outweighed that relationship, I believe that this is it.”

After considering the arguments of counsel, the court found by clear and convincing evidence that the children were likely to be adopted and that the parental benefit exception did not apply. Parental rights were terminated and adoption was identified as the permanent plan.

DISCUSSION

Mother contends the juvenile court erred in finding that the parental benefit exception to adoption (§ 366.26, subd. (c)(1)(B)(i)) did not apply. We disagree.

“At a section 366.26 permanency planning hearing, the juvenile court determines a permanent plan of care for a dependent child, which may include adoption. [Citations.] ‘If the dependent child is adoptable, there is strong preference for adoption over the alternative permanency plans.’ [Citations.] In order to avoid termination of parental rights and adoption, a parent has the burden of proving, by a preponderance of the evidence, that one or more of the statutory exceptions to termination of parental rights set forth in section 366.26, subdivision (c)(1)(A) or (B) apply. [Citations.] The court, ‘in exceptional circumstances,’ may ‘choose an option other than the norm, which remains adoption.’ [Citation.] The parental benefit exception applies when there is a compelling reason that the termination of parental rights would be detrimental to the child. This exception can only be found when the parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).)” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 394-395, italics omitted.) “We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child. [Citations.]” (*Id.* at p. 395.)

The juvenile court did not abuse its discretion in finding that the parental benefit exception did not apply. In asserting

otherwise, mother merely offers that she “has taken steps to maintain her sobriety, she has occupied a parental role in her children’s lives, and termination of [her] parental rights could result in the loss of the parental relationship to the detriment of both [A.R.] and [J.R.]” The court correctly found, however, that mother had failed to meet her burden of proving the parent/child relationship “promotes the well-being of the child[ren] to such a degree as to outweigh the well-being the child[ren] would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) In making this determination, “the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*Ibid.*) The strong preference for adoption is overcome only “[i]f severing the natural parent/child relationship would deprive the child[ren] of a substantial, positive emotional attachment such that the child[ren] would be greatly harmed.” (*Ibid.*)

Mother made no showing that the children would suffer great harm if her parental rights were terminated. She demonstrated, at most, that the children would benefit from continuing their relationship with her. The statutory scheme, however, “makes it plain that a parent may not claim entitlement to the exception provided by subdivision (c)(1)(A) simply by demonstrating some benefit to the child from a continued relationship with the parent, or some detriment from termination of parental rights.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349.) “Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation

of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*Id.* at p. 1350.) The juvenile court correctly found this is not such a case.³

DISPOSITION

The judgment (order terminating parental rights) is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

³ For the first time in her reply brief, mother claims that “[t]ermination of [her] parental rights is unnecessary given legal guardianship would provide the children with stability in their life.” (Citation omitted.) This claim is forfeited and in any event lacks merit. “Once the court determines adoption is feasible, the less desirable and less permanent alternatives of guardianship and long-term foster care need not be pursued.” (*Jones T. v. Superior Court* (1989) 215 Cal.App.3d 240, 249; *In re Jose V.* (1996) 50 Cal.App.4th 1792, 1799.) *In re Scott B.* (2010) 188 Cal.App.4th 452, 471, which mother cites in support of her claim, is plainly inapposite. (See *id.* at p. 457-463, 472 [parental benefit exception applied where autistic child had an “extremely close bond” with his mother, wanted to live with her, and indicated he would run away from his foster family if he were adopted].)

Roger T. Picquet, Judge
Superior Court County of San Luis Obispo

Gina Zaragoza, under appointment by the Court of Appeal,
for Defendant and Appellant.

Rita L. Neal, County Counsel, Leslie H. Kraut, Deputy
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